

REMARKS

Reconsideration of the above-identified patent application is respectfully requested. Claims 15-28 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent No. 5,526,120 to Jina et al. (Jina).

Regarding claim 15, this claim has been amended to clarify that the light intensity detected by the detector when the test element is incorrectly positioned is “light intensity of reflected radiation from the test element.” Jina fails to teach or suggest detecting the light intensity of reflected radiation *from a test element* when the test element is in an incorrect position. On the contrary, Jina teaches detecting light reflectance from a surface (134) of an optical reading apparatus (12) when the test element is in an incorrect position.

“Accordingly, when no strip is present in the passageway or the strip is not fully inserted, then *light reflectance 140 from surface 134* is low, essentially no current flow in switch 142 and the node P is at a relatively high potential. Under these conditions, the microprocessor of the apparatus will preclude an erroneous reading.” (Col. 14, ll. 32-37. Emphasis added. See also Figure 13.)

Further, Jina fails to provide any motivation for detecting the “light intensity of reflected radiation from the test element” when the test element is in an incorrect position. This is because Jina is concerned with “detect[ing] whether or not the strip has been fully inserted.” See Abstract. Applicant’s invention, on the other hand, is directed to detecting whether the test element is in a deformed position relative to a correct position in which an analytical area of the test element is relatively flat. Jina, however, teaches the use of a bias means (40) to bias the strip (10) to a flat orientation, but fails to teach or suggest a method or apparatus for *detecting* whether the strip 10 is, in fact, lying flat over the aperture 30.

“Incorporated into the upper guide 22 is bias means 40 which is adapted to be biased toward the upper surface 42 of the lower guide in the area of the pasture 30 so as to ensure that the portion of the strip 10 lying over the aperture 30 is flat and presents an optically consistent surface to the optics.” (Col. 7, ll. 45-49.)

Accordingly, Jina fails to render claim 15, as amended, § 103(a) obvious. Applicant respectfully submits that claim 15 is now in condition for allowance. Because

claims 16-25 depend from claim 15, these claims are also believed to be in condition for allowance.

Regarding claim 26, this claim recites “that the intensity of radiation reflected *from the test element* and detected is different when the analytical area is correctly positioned than the intensity when it is incorrectly positioned.” As discussed above in regard to claim 15, Jina clearly does not teach or suggest detecting the intensity of radiation reflected *from the test element* when the test element is incorrectly positioned. Again, Jina teaches detecting reflectance from a surface (134) of an optical reading apparatus (12) when the test element is in an incorrect position. Col. 14, ll. 32-37. See also Figure 13. For this reason and the reasons discussed above in regard to claim 15, Jina fails to render claim 26 § 103(a) obvious. Accordingly, Applicant respectfully submits that claim 26 is in condition for allowance. Because claims 27 and 28 depend from claim 26, these claims are also believed to be in condition for allowance.

Claim 15 has been amended. Claims 15-28 are believed to be in condition for allowance, and such action is solicited. The Examiner is cordially invited to contact the undersigned by telephone to discuss any unresolved matters.

Respectfully submitted



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